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No. 8, Original

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

STATE OF ARIZONA,

Complainant,

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CITY OF SAN DIEGO, AND COUNTY OF SAN DIEGO,

Defendants,

UNITED STATES OF AMERICA AND STATE OF NEVADA,

Intervenors,

STATE OF NEW MEXICO AND STATE OF UTAH,

Impleaded Defendants.

STATE PARTIES' RESPONSE IN OPPOSITION TO MOTION OF PYRAMID LAKE TRIBE FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* AND BRIEF OF *AMICUS CURIAE*

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STATE PARTIES' RESPONSE IN OPPOSITION TO MOTION OF PYRAMID LAKE TRIBE FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* AND BRIEF OF *AMICUS CURIAE*

The State Parties respectfully oppose the Motion filed on behalf of the Pyramid Lake Tribe (the "Pyramid Tribe") for leave to file a brief of *amicus curiae.* The State Parties base their opposition on the fact that the

issue briefed by the Pyramid Tribe is factually and legally distinguishable from the issues determined by the Special Master in the instant proceeding. Further, no party to the instant proceeding filed an exception to the Special Master's failure to determine the issue briefed by the Pyramid Tribe. Accordingly, there is no legal basis for this Court's consideration of the Pyramid Tribe issue and the Motion for leave to file an *amicus* brief should be denied.

MEMORANDUM IN SUPPORT OF STATE PARTIES' OPPOSITION TO PYRAMID LAKE TRIBE'S MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE*

The Pyramid Tribe and its members have been involved for some years in an action to quiet title to water rights from the Truckee River in Nevada. A major legal issue considered in the course of that proceeding concerns the right of the Pyramid Tribe to relitigate previously adjudicated water rights where there is evidence that the United States' representation of the Tribe's interests in the prior proceeding was tainted by a conflict of interest (hereinafter referred to as the "conflict of interest issue"). In its Motion for leave to file an *amicus* brief, the Pyramid Tribe concedes that this issue is distinguishable from the issues before this Court in the present proceeding. The Pyramid Tribe also concedes that its discussion of the issue extends beyond that in the Special Master's Report and presents the issue from a different perspective than that of the parties. Pyramid Tribe Motion at pages 3-4. Nevertheless, the Pyramid Tribe contends that it should be permitted to brief the conflict of interest issue because the resolution of the issues in

this case may affect the resolution of the conflict of interest issue in the Pyramid Tribe litigation. *Id.* at page 3. The Pyramid Tribe's position is totally without merit and, accordingly, the Motion should be denied.

An *amicus* brief does not provide *carte blanche* authority for review and consideration of legal issues not determined in the course of the litigation. Rather, an *amicus* brief serves the limited purpose of expanding upon facts or questions of law which the *amicus curiae* believes will not be adequately presented by the parties.

In the instant proceeding, the Tribal litigants[1] contended that because the United States' representation in the prior *Arizona v. California* litigation was tainted by a conflict of interest, the Tribes were not barred from asserting water rights for certain allegedly "omitted lands".[2] However, in ruling on the omitted lands issue the Special Master determined that Article IX of the 1964 decree provided authority for correcting "mistakes" which allegedly occurred in the prior proceeding. On this basis, the Special Master recommended that this Court revise the Tribe's reserved water rights to take into account the additional water rights attributable to the omitted lands. Significantly, the Special Master made no findings of fact or conclusions of law on the question of whether the United States' representation of the Tribes' rights in the prior proceeding was tainted by a conflict of interest. More importantly, no party to the present proceeding filed an exception to the Special

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[1] That is, the Colorado River, Fort Mojave, Fort Yuma, Cocopah and Chemehuevi Indian Tribes.

[2] *E.g.*, Motion of the Colorado River Indian Tribes, and the Cocopah Indian Tribe for Leave to Intervene and Petition of Intervention at page 9 (April 10, 1978).

Master's Report which alleged that the conflict of interest issue should have been determined. As a result, the conflict of interest issue lost all viability and there is no legally supportable basis by which the issue can now be revived by a party. And, if a party cannot revive the conflict of interest issue, it necessarily follows that an *amicus curiae* or other non-party is absolutely without grounds for raising the issue. Finally, the Pyramid Tribe's Motion for leave to file an *amicus* brief was filed on June 24, 1982, which is more than a month beyond the deadline for submission of the parties' exceptions and briefs on the Special Master's Report. Thus, the Motion is not timely under Rule 36. On this basis alone, this Court should deny the Motion.

CONCLUSION

For the foregoing reasons, the State Parties submit that there are no reasonable or legally supportable grounds for granting the Pyramid Tribe status as an *amicus curiae.* Accordingly, the State Parties respectfully request that this Court deny the Pyramid Lake Tribe's Motion for leave to file an *amicus curiae* brief.

Respectfully submitted,

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